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CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
BY: EC DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Saad Ali Ghulam, DHS File No. A27 203 500) Plaintiff,) vs.) Paul Pierre, District Director,) U.S. Citizenship and Immigration Services,) Michael Chertoff,) U.S. Secretary of Homeland Security, and) Michael B. Mukasey, U.S. Attorney General,) Defendants.)	Civil No: '08 CV 1028 WQH NLS **COMPLAINT FOR RELIEF IN THE NATURE OF MANDAMUS**

Plaintiff, by his attorney, complaining of Defendants alleges as follows:

1. The Defendant Paul Pierre is the Director of the U.S. Citizenship and Immigration Services (CIS), a subsidiary agency of the U.S. Department of Homeland Security (DHS), in San Diego, California. The Defendant is sued herein in his official capacity. The Defendant is responsible for the processing of applications for adjustment of status under 8 USC 1255, et. seq., and 8 CFR 245, et. seq.

2. Michael Chertoff is the Secretary of Homeland Security, an agency of the U.S. Government, in Washington, D.C. The Defendant is sued herein in his official capacity. The Defendant is responsible for overseeing the operations of the CIS, pursuant to 8 USC 1255, et. seq., and 8 CFR 245, et. seq.

3. Alberto Gonzales is the U.S. Attorney General, an agency of the United States Government, in Washington, D.C. The Defendant is sued herein in his official capacity. The

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Defendant is responsible for the processing of security clearance checks conducted by the Federal Bureau of Investigation (FBI), which the CIS maintains must be completed before it can approve any application for adjustment of status under 8 USC 1255, et. seq., and 8 CFR 245, et. seq.

4. The Court has jurisdiction of this action pursuant to 28 USC 1331, 28 USC 1361, 28 USC §1391(e), 28 USC 1651, 5 USC §§551, et seq., 5 USC 701, et. seq., and 28 USC 2201, et. seq..

5. Plaintiff Saad Ali Ghulam is a native and citizen of Iraq. On July 5, 1985, the former U.S. Immigration and Naturalization Service (INS), now the U.S. Citizenship and Immigration Services (CIS), admitted Mr. Ghulam to the United States as a nonimmigrant visitor for pleasure at Honolulu, Hawaii. On March 29, 2001, Mr. Ghulam's U.S. citizen mother, Mariam Ghulam, filed with the INS a Form I-130 Petition for Alien Relative on behalf of the plaintiff. August 26, 2004, the CIS approved the petition.

6. On or about June 12, 2005, Mr. Ghulam filed with the CIS an application for adjustment of status as the unmarried son of a U.S. citizen parent, based on the approved petition. The CIS approval of the adjustment application would result in the Plaintiff receiving lawful permanent residence in the United States.

7. Shortly after he filed his adjustment of status application, the Plaintiff provided his biometric fingerprints to the CIS Application Support Center (ASC). He has since twice more provided his biometric fingerprints, the last of which occurred on March 12, 2008, at the CIS ASC in San Marcos, California. The FBI fingerprint results for each of the three submissions show that the Plaintiff has never been arrested or convicted of any crime anywhere in the world.

8. On February 13, 2006, more than two years ago, Mr. Ghulam and his mother appeared in-person at the CIS Chula Vista Customer Service Center (CVCSC) for a scheduled adjustment of status examination. At the conclusion of the examination, the district adjudications

officer (DAO) advised that she could not approve Plaintiff's adjustment of status application until after security name check results had been received from the Federal Bureau of Investigation (FBI).

9. On August 12, 2007, the Plaintiff, through counsel, last inquired in writing as to the status of this matter with the CIS. The government responded in writing by advising that the CIS could take no further action on Plaintiff's adjustment of status application his FBI security clearances were completed. The CIS claimed that the further processing of the Plaintiff's adjustment case was beyond its control because the security checks are performed by other government agencies, namely, the FBI.

10. The Plaintiff resides with his petitioner mother, Mariam Ghulam, who is 82 years old. Approximately in May 2007, Mariam was diagnosed with breast cancer. In July 2007, doctors at the University of California at San Diego Thornton Hospital performed a mastectomy on the Plaintiff's. Mariam has received Social Security disability for approximately the past 15 years, from the time that she lost vision in one eye from a stroke. Mariam has been diagnosed with suffering from severe Obsessive Compulsive Disorder (OCD) and the onset of Alzheimer's disease. She has high cholesterol levels and must take medication daily to reduce the effects of this condition. She also suffers from low bone density, anemia, and vitamin deficiency. She takes medication and/or vitamins to relieve the effect of these illnesses. She is unable to walk without physical assistance because she loses her balance. In addition to the above, Mariam consults with a psychiatrist on account of the severe emotional depression that she has suffered from for at least 15 years. She takes prescription medication each day for the depression. Mariam is totally dependent upon the Plaintiff for emotional support and physical assistance. Doctors have advised that she is in physically and emotionally deteriorating condition.

11. The Court should know that in order for the Plaintiff to successfully complete his lawful immigration to the United States his petitioner mother must survive him. Thus, should

Mariam pass away before the CIS might approve his adjustment of status, the Plaintiff will not lawfully immigrate to the United States on the mother's petition that was filed on his behalf more than seven years ago.

12. In conclusion, more than three years after he filed his application for adjustment of status, and more than two years after the CIS examined the Plaintiff on his adjustment application, the government has failed to adjudicate his application, and refuses to adjudicate the application until the FBI completes its security clearance checks.

13. Defendant Pierre has been unable or unwilling to adjudicate Plaintiff's application for adjustment of status. Further, his office has failed to meaningfully disclose the status of the FBI security clearance checks. Defendants Pierre, Chertoff, and Gonzales are taking no action on Plaintiff's application even though similar cases have been completed expeditiously.

14. On April 2, 2008, the CIS issued a News Release in which it proclaimed that the agency and the FBI had reached a "joint plan" to eliminate the backlog of name checks pending with the FBI. In the release, the government agencies announced that "by increasing staff, expanding resources, and applying new business processes," it would process all name checks pending more than three years not later than May 2008. Counsel notes that although the Plaintiff's name check has been pending more than three years, it has not resolved the Plaintiff's name check issue.

15. Plaintiff has exhausted all available administrative remedies.

16. The Defendants' refusal to act in this case is, as a matter of law, arbitrary, and not in accordance with the law.

17. Plaintiff has been greatly damaged by the failure of the each Defendant to act in accord with his respective duties under the law.

18. The Defendants, in violation of the Administrative Procedures Act, 5 USC 701, et seq., have unlawfully withheld or unreasonably delayed action with Plaintiff's application and have failed to carry out the adjudicative and administrative functions delegated to them by law and regulation with regard to Plaintiff's case.

WHEREFORE, Plaintiff prays that this Honorable Court:

A. Order the Defendants to have their agents process this case to a conclusion;

B. Order that the Defendants pay reasonable attorney fees; and

C. Order other and further relief as it may deem proper under the circumstances.

DATED: June 8, 2008

ALAN M. ANZAROUTH
Attorney for Plaintiff

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

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I. (a) PLAINTIFFS

DEFENDANTS

Paul Pierre, District Director, U.S. Citizenship and Immigration Services, Michael Chertoff, U.S. Secretary of Homeland

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alan M. Anzarouth, 3111 Camino del Rio N., Suite 1325, San Diego, CA 92108 619-398-9390

Attorneys (If Known) '08 CV 1028 WQH NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
8 USC §1255, 28 USC §§1331, 1361, 1391(e), 1651, and 2201

Brief description of cause:
USCIS has failed to adjudicate Plaintiff's application for adjustment of status nearly 3 years after filing

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: 06/09/2008

SIGNATURE OF ATTORNEY OF RECORD: [signature]

FOR OFFICE USE ONLY

RECEIPT # 151744 AMOUNT $350— APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

[initials] 06/09/08

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UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

151744 - MB
* * C O P Y * *
June 09, 2008
13:30:21

Civ Fil Non-Pris
USAO #.: 08CV1028 CIVIL FILING
Judge..: WILLIAM Q HAYES
Amount.: $350.00 CA

Total-> $350.00

FROM: VS PAUL PIERRE, ET AL